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Lifting the veil New rules would make Native corporations more transparent Regulation overhaul

PAULA DOBBYN
Anchorage Daily News Staff

For the first time in more than 20 years, the state is overhauling the rules governing Native corporations, the largest private land owners and some of the biggest economic engines in Alaska. Banking, Securities and Corporations Division officials say the proposed changes would strengthen oversight of Native firms and improve the credibility of their financial reports and election practices. The regulations apply to corporations with at least 500 shareholders and more than \$1 million in assets.

"We've kind of revamped the prohibitions on what you can and cannot do," said Vince Usera, senior securities examiner.

The congressionally created Native firms -- more than 200 in all -- are exempt from scrutiny by the Securities and Exchange Commission, the federal agency that regulates publicly traded firms. Under the Alaska Native Claims Settlement Act that created Native corporations in 1971, the privately held businesses fall under limited oversight by Usera's agency.

In the three decades since ANCSA's enactment, managers, directors and shareholders at Native companies have often warred over the way the firms are run, who's in charge and the amount of money paid in salaries or stockholder dividends. When battles arise, the state often refers parties to the courts, saying it doesn't have the authority or the work force to referee the conflicts.

A legislative audit four years ago determined that the state did a poor job as corporate police officer and that Native shareholders were pretty much on their own.

The regulation overhaul represents a response, in part, to the audit's recommendations for stepped-up oversight, said Bruce Edwards, a Seattle attorney who represents a number of Southeast Native corporations.

"These regulations try to move us forward into the reality of the 21st century," Edwards said.

Critics say the changes don't go far enough to protect the rights of tens of thousands of Native shareholders and some say it's time for the SEC to take charge.

"The (new) regulations, it appeared to me, were written pretty much in favor of the corporation and less in favor of the independent challengers," said Roy Huhndorf, a board member of Cook Inlet Region Inc., one of the most powerful Native corporations in the state.

"If anything, the division should be more of an advocate of the shareholder," said Huhndorf, a former CIRI chief executive who now acts as a company watchdog.

What the regs do

Banking and Securities, as the state agency is commonly called, began reviewing Native corporation rules last year. Draft changes came out in late summer and officials asked for feedback.

Since Native corporations have grown in financial stature and influence over the years, the update was long overdue, Usera said.

After a steep learning curve that saw several firms teeter toward bankruptcy, many Native corporations are now managing multimillion-dollar stock-and-bond portfolios along with running diverse subsidiaries around the world. One Native firm -- Arctic Slope Regional Corp. -- generates about \$1 billion in annual revenue. Others have hundreds of million of dollars in assets.

The corporations are involved in every aspect of the state's economy, including oil, fishing and tourism. Every year, they pump out hundreds of millions of dollars in wages and pay tens of millions of dollars in dividends to shareholders, many of who live in Alaska and spend the money locally.

While the companies have matured, they still tend to experience internal feuds between people who are related through blood and marriage. Over the years, Banking and Securities has fielded numerous complaints about illegal board elections, dubious financial information, false and misleading statements, self-dealing and other charges. At times, it has issued fines or cease-and-desist letters. But many disputes go uninvestigated because Banking and Securities doesn't have the staff time or because the issue is outside its jurisdiction, according to the audit and officials.

To lift the veil that cloaks many of these corporations in secrecy, the agency has proposed ways to make the companies more transparent and accountable to shareholders. At the same time, some of the changes could benefit management by providing more scrutiny of certain activities by dissidents, such as petitions for big dividends, several lawyers said.

Among the nearly 70 pages of regulation changes is an end to a long-standing practice at some Native corporations of offering cash prizes or other incentives to shareholders who cast their proxy, or vote, for a particular board candidate. The goal is to end coercion or vote-buying.

Along the same lines, if someone is paid \$500 or more to solicit proxies, corporations must disclose that, under the proposed changes.

There's a host of other changes proposed. Here are a few examples:

- * Shareholder petitions, for such actions as a special dividend or a board recall, for example, would be filed with Banking and Securities. This would give the division the ability to review the legality of such petitions and provide a heads-up to corporate management when a shareholder action is afoot.
- * Neither management nor independents could run more candidates than there are board seats available. The goal here is to end the practice of "stacking" an election. This is a common practice whereby a slate will run more candidates than it can possibly seat with the goal that it will attract sufficient votes to get at least one of its candidates elected.
- * A candidate would need good cause to withdraw at the last minute and not use a withdrawal as a tactic to shift proxies to stronger candidates. If candidates are going to withdraw, their proxy materials must inform shareholders where their votes will go if they pull out. This is an attempt to hold more honest and fair elections.
- * Corporations would disclose the compensation of all directors and officers, not only of the Native corporation, but its subsidiaries and nonprofits as well. In the past, this only applied to the top five highly paid directors or officers of the parent company.
- * Corporations, in their annual reports, would describe financial transactions exceeding \$20,000 and reveal a more precise dollar figure of the deal. This is an attempt to shed more light on how the company is spending the shareholders' money.

* Board candidates would provide their education background for the first time. And they would disclose criminal convictions, in some cases, dating back 10 years.

What people are saying

The regulation changes have drawn a stack of comments about 21/2 inches high, Usera said.

Not surprisingly, the comments from corporations, lawyers and shareholders tend to fall into two camps: those who advocate for a stronger state role in regulating the corporations, and those who think Banking and Securities has been doing a decent job.

In a letter to Usera, CIRI's attorney Keith Sanders said the company opposes some of the increased disclosure requirements. They would put the corporation at a competitive disadvantage by having to make public sensitive financial information. Also, expanding the reporting requirements to include subsidiaries in many cases vastly increases the scope of what must be disclosed.

"Compliance could be extremely burdensome and is not necessary for the protection of shareholders," Sanders wrote.

Juneau-based Sealaska Corp. opposes a change that would allow people with complaints against Native corporations to remain anonymous if they legitimately feared retribution.

"A grant of anonymity is practically a license for the petitioner to get away with wild, unsubstantiated claims, against which the respondent can make no meaningful defense," wrote E. Budd Simpson, an attorney for Sealaska.

Sealaska also doesn't like the proposed change that would prevent weaker candidates from dropping out at the last minute and giving their votes to someone else. That's a long-standing and legitimate practice, according to Simpson. "The proposed regulation change would materially alter corporate election practices, without legal authority to do so."

Huhndorf doesn't put much stock in the complaints of corporate management about Banking and Securities taking a tougher stance. Native shareholders need as much protection as possible, in his view.

"The corporations can take care of themselves," he said. "There's a lot of legal horsepower on that side."

He acknowledged that Banking and Securities is underfunded and too thinly staffed to police more than 200 Native corporations, not to mention other non-Native companies subject to state securities laws. But regardless of staff and budget concerns, the division tends to support the interests of corporate management over individual shareholders, he said.

"We have made very legitimate complaints and we've been met with silence," Huhndorf said.

The state tries to remain impartial in Native corporation disputes, said Usera. Some people feel the division should "bend over backwards" for shareholders, he said. "I just can't do that."

The proposed changes are being reviewed by the Department of Law and should be in place next year. Usera said he'd like to see how they work for about a year, and after that they may be updated again.

Refereeing Native shareholder disputes

CHARLES ATKINS
Anchorage Daily News

The state is revising its rules under which Native corporations report financial information and conduct their annual meetings to address years of unfairness complaints.

Proposed changes

1. Allow electronic dissemination of proxy statements.
2. Board candidates must disclose their educational background, whether they're on boards of any subsidiary or non-profit of the corporation and whether they've had recent bankruptcies or criminal convictions.
3. Prohibit payments for votes on proxy issues.
4. Dinners, door prizes at meetings open to all shareholders.
5. All sides use the same list of shareholders when soliciting proxies.
6. Board candidates cannot drop out at the last minute without good cause nor shift votes to another candidate without prior notice. Slate cannot run more candidates than there are available board seats.
7. Only proxies from management may use the corporate logo.
8. The board's proxy statement must include the most recent financial statement.
9. Proxies must disclose the compensation of all directors and the five highest paid officers of the corporations and subsidiaries.
10. Establish a timeline for adjudicating complaints.
11. Clarify an existing requirement for filing shareholder petitions for recalls, special meetings, dividend or other actions. Requires naming of those pushing the petition.

Purpose of change

1. To improve access and timely dissemination of information.
2. Foster credibility and transparency.
3. Abolish vote buying.
4. Crack down on coercion to vote certain ways.
5. Equal access to shareholders.
6. Provide transparency in the proxy process.
7. Clarify what is a management-endorsed proxy solicitation.
8. Give shareholders the most recent financial information.
9. Better information on which people are making the most money within the company, its subsidiaries and non-profits.
10. Speed up the handling of complaints.
11. Allow state officials to review the material and to identify petitioners.

TO SEE the proposed regulation changes regarding Native corporations, go to
www.dced.state.ak.us/bsc/home.htm